

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 254, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO
(Brandeis University)

and

Case 1-CB-8835

JORGE LUIS SANTANA, an Individual

Robert J. DeBonis, Esq.,
of Boston, MA,
for the General Counsel.
Peter J. O'Neill, Esq.,
of Boston, MA,
for Respondent Union.

DECISION

Statement of the Case

MARTIN J. LINSKY, Administrative Law Judge: On June 24, 1996, Jorge Luis Santana, an individual, filed a charge against Local 254, SEIU, Respondent Union herein.

On January 24, 1997 the National Labor Relations Board, by the Regional Director for Region 1, issued a Complaint alleging that Respondent Union violated Section 8(b)(1)(A) of the National Labor Relations Act, herein the Act, when on May 8, 1996 it removed the charging party, Jorge Luis Santana, a custodian at Brandeis University, from his position as a steward and from his position as a representative to the Labor-Management Committee.

Respondent Union filed an answer in which it denied that it violated the Act in any way.

A hearing was held before me in Boston, Massachusetts, on May 27, 1997.

Upon the entire record in this case, to include post hearing briefs submitted by the General Counsel and Respondent, and upon my observation of the demeanor of the witnesses, I hereby make the following

Findings of Fact

I. Jurisdiction

At all material times, Brandeis University, the employer herein, a corporation with an office and place of business in Waltham, Massachusetts, has been engaged in the operation of a nonprofit private educational institution.

Respondent Union admits, and I find, that at all material times, the employer has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5 II. The Labor Organization Involved

Respondent Union admits, and I find, that Local 254, SEIU, is a labor organization within the meaning of Section 2(5) of the Act.

10 III. The Alleged Unfair Labor Practices

A. Overview

15 Section 8(b)(1)(A) of the Act provides that “It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section (7) [of the Act]. . . .”

20 Section 7 of the Act provides that “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).”

25 Under Section 7 of the Act, union members have a right to participate in internal union affairs, to question the wisdom of their representation, and to attempt to redirect its policies or negotiating strategies.

30 It appears clear, however, that a union can demand teamwork, loyalty and cooperation from its appointed officials, to include shop stewards and representatives to labor management committees, and that this power to demand teamwork, loyalty and cooperation is such that a union can remove an appointed union official from his position without violating the Act if the Union determines that the appointed union official is not a team player or isn’t loyal, or is not
35 cooperative.

40 A comparison between the Supreme Court decisions in *Finnegan v. Leu*, 456 U.S. 431 (1982), which dealt with an appointed union official and *Sheet Metal Workers v. Lynn*, 488 U.S. 347 (1989), which dealt with an elected union official, makes this clear.

45 The Board has also addressed this issue, maybe most notably, in *Shenago, Inc.*, 237 NLRB 1355 (1978), where one of the issues was whether the union violated Section 8(b)(1)(A) of the Act when it removed a member from his appointed position as Safety Committee Chairman because of his activities in connection with an internal union election, i.e., he supported the candidacy of the losing candidate for union President.

The Board found no violation of the Act in *Shenago, Inc.*, *supra*, and held:

“The issue is one of balancing the employee’s Section 7 right to engage in internal union affairs against the legitimacy of the union interest at stake in the particular case. Thus, in *Carpenters Local Union No. 22, United Brotherhood of*

Carpenters and Joiners of America, AFL-CIO (William Graziano, d/b/a Graziano Construction Company), 195 NLRB 1 (1972), the union had no legitimate interest in fining a member for opposing the incumbent union officers, so the balance was properly struck in favor of the employee and the violation was found. Similarly, in *General American Transportation Corporation*, 227 NLRB 1695 (1977), the Board found an 8(b)(1)(A) violation where the union removed the steward from office because he filed an unfair labor practice charge with the Board. There, the union had no legitimate interest in defeating employee access to the Board. See, generally, *Scofield, et al. v. N.L.R.B.*, 394 U.S. 423, 428-430 (1969).

Here, however, the Union does have a legitimate interest in placing in offices such as chairman of the safety committee those people it considers can best serve the Union and its membership. Retention of a plant safety committee chairman who is hostile to or in disagreement with the leadership may be undesirable or ineffective for a host of valid reasons. That this may add up to union hostility toward having a dissident in such positions and make his dismissal a reprisal, as it did here, does not alter the case. The union is legitimately entitled to hostility or displeasure toward dissidence in such positions where teamwork, loyalty, and cooperation are necessary to enable the union to administer the contract and carry out its side of the relationship with the employer. In the circumstances of this case, the Union's interest outweighs the interest of Ligashesky in retaining his office, and therefore, we do not find a violation in his removal from office or in the March 8 statement to Ligashesky informing him that his removal was caused by his support for Sadlowski." (Emphasis added)

In order to decide the instant case it is imperative to determine if Santana was an appointed or an elected union official and to determine why he was removed as shop steward and as a representative to the Labor-Management Committee.

B. Shop Steward

Jorge Luis Santana is a custodian at Brandeis University and represented by the Respondent Union.

On August 8, 1994 he became one of two shop stewards for the custodians when one of the two custodian shop stewards resigned and Santana took his place. It is my opinion that Santana was appointed rather than elected to this position.

The Constitution and By-Laws of both the SEIU International and Local 254, Respondent Union herein, are silent on the issue of shop stewards. There are a number of officer positions in the Respondent Union spelled out in the Constitution and By-Laws which are filled for a term of years following an election. Shop steward is not among them. The practice within Respondent Union, which represents a large number of bargaining units, to include the 120 or so employees in the bargaining unit at Brandeis University, approximately 73 of whom are custodians, is for the union business agent to decide who is to be shop steward and for how long he or she serves. Sometimes the business agent will appoint one or more shop stewards for a particular group of employees or conduct an election between two or more employees who want to be a shop steward. There is no term of office if the person becomes a steward.

In the case of Santana one of two shop stewards for the custodians resigned his post. Union Business Agent Cathy Conway asked who among the custodians wanted to be a shop

steward and only Santana expressed an interest in becoming a shop steward. Since only Santana expressed an interest in becoming shop steward Conway said there would be no need for an election and Santana was named shop steward. In light of the above I find that Santana was appointed to the position of shop steward. Again, the Union Business Agent selects the steward and in deciding who to give the position to either selects someone outright or selects the winner of an election among those interested in becoming steward. There is no term of office for shop steward and shop stewards serve at the pleasure of the business agent.

C. Representative to Labor-Management Committee

In October 1995 Santana became a representative to the Labor Management Committee. The collective bargaining agreement between Respondent Union and Brandeis University called for the establishment of a Labor-Management Committee. There was to be 5 representatives on the Committee from Management and 5 from Respondent Union. The contract specifically provided that the union representatives to the Committee would be elected for 3 year terms.

Union Business Agent Conway asked the custodians who among them wanted to be on the Labor-Management Committee. The only one expressing an interest was Santana who submitted a nominating petition signed by some fellow custodians supporting his candidacy. Since only Santana expressed an interest he was designated one of the Union representatives to the Labor-Management Committee. The Committee meets to discuss matters of mutual concern to management and workers so that operations run more smoothly, more efficiently, and more fairly at Brandeis.¹ I find that Santana's position as a member of the Labor-

¹ ARTICLE XXX LABOR-MANAGEMENT COMMITTEE

Effective upon execution of this Agreement, a joint Labor-Management Committee (the "Committee") shall be formed, consisting of 5 representatives of the Union and 5 representatives of the University.

Union representatives shall be elected for three year periods by secret ballot from each of the following areas:

Grounds	1 representative
Crafts	2 representatives
Custodians	2 representatives

The University shall designate its representatives. In addition, the Committee can call upon other individuals and resources as necessary. The Committee may also decide to perform its work through the use of subcommittees or other combinations.

The Committee shall meet a minimum of once every month for the purpose of discussing and attempting in good faith, through mutual cooperation and creativity, to solve problems that interfere with the ability of the bargaining unit to remain a viable, competitive source of custodial, grounds and trade services for the University. The parties knowlege that in light of competitive pressures in the marketplace, they face a joint challenge to provide the best possible service to the University in the most efficient manner. The Committee shall attempt to explore new ways of working together effectively, including but not limited to techniques of performing and evaluating work, new methods of maximizing quality and efficiency, and new ways of joint problem-solving. The University may, at its discretion, provide training and/or other support for the Committee to enhance its work. The Committee shall attempt to use techniques such as brainstorming, quality initiatives, experimentation and incentives to generate new and better ways of serving the University.

The parties agree that the Committee shall not be a substitute for collective bargaining, but it will serve as a new approach to the parties' relationship, designed to make it more productive.

Continued

Management Committee was an elected rather than an appointed union position because the contract between the Union and Brandeis University called for the union representatives to the Committee to be elected and once elected they held office for a term of 3 years.

5 D. Removal of Jorge Luis Santana as Shop Steward
 and Representative to Labor-Management Committee

The next issue to decide is why was Santana removed as shop steward and representative to the Labor-Management Committee.

10 In December 1995 a number of custodians were docked a day's pay for not showing up for work on a snow day when the University had shut down because of the snow.

15 Apparently, in the past, if the University was shut down because of the weather and custodians, who were supposed to report to work even if the University was closed, couldn't get to work because of the weather conditions they would still be paid. The 1995-1996 winter was a particularly harsh winter in the northeast as many of us remember and some custodians couldn't get to work on several different days when the University was otherwise shut down due to weather conditions.

20 On January 17, 1996 Santana filed a grievance over the failure of the University to pay custodians for these days missed. The grievance was resolved with the input of Business Agent Cathy Conway with all the grievants being made whole by getting paid the moneys they had been docked and an agreement in the future that if an essential employee couldn't get to work because of weather conditions the particulars of each incident would be examined on a case by case basis and if the absent employee had a good excuse the employee would be paid even though the employee never made it to work.

25 Unsatisfied with the handling of the grievance by his union superiors, Santana encouraged a number of custodians to file a class action grievance on March 18, 1996 which was resolved as noted above but Santana complained about that disposition on April 26, 1996. Santana sought to reopen the entire question of who is an essential employee and what are the effects of that designation on issues such as overtime. This was done without consulting with his union superiors. In short, Santana's complaints and actions severely undercut the authority of Business Agent Conway.

30 On May 6, 1996 Santana presented two petitions to Conway. One petition, signed by 32 custodians, sought the selection of Ricardo Vasquez as shop steward and the second petition, signed by 38 custodians, nominated Santana for the position of Chief Steward and sought an early election for that position. The Chief Steward's position was one which had traditionally been an appointed position and for which there was no opening since, in the union's opinion, the incumbent Chief Steward, Jack O'Malley, was doing a good job.

35 Two days later on May 8, 1996 Business Agent Cathy Conway sent a letter to Jorge

40 Nothing in this agreement shall limit the University from using other quality-enhancing training and development techniques.

Bargaining unit members of the Committee will be given release time to perform Committee work when it arises during their regular work hours, and shall be given compensatory time at time and one half when such Committee work, as directed by the University, occurs outside their regularly scheduled hours.

Luis Santana advising him that he was being removed from his positions as Shop Steward and representative to Labor Management Committee. The letter stated in pertinent part:

“Pursuant to our recent telephone conversations and discussions, I am investigating several problems reported by our members involving the two (2) representational positions you hold on behalf of Local 254 - i.e., Custodial Shop Steward and Custodial Labor-Management Committee representative.

As I explained to you in the those conversations, I want to provide you an opportunity to understand these problems by way of a written outline of the complaints brought to my attention over the last few weeks.

First, with regard to your role and responsibilities as Shop Steward, the following issues have been raised:

- 1) inappropriate handling of grievances, including:
 - failure to consult with grievant about appeal to next level
 - unauthorized communications to the Director of FMD concerning grievances (two instances)
 - conducting unauthorized Union meetings with sub-groups of employees
 - failing to invite and include all Union members in said meetings
 - utilizing said meetings for activities that are injurious to Union members and cause dissension within the Union
 - failure to disclose information about grievances to Business Agent

With regard to your Labor-Management Committee position:

- failure to work cooperatively with the other Custodian LMC representative
- failure to disclose information about LMC business with LMC team and Business Agent

Please be advised that the problems cited above have been reported by members and/or directly observed or experienced by me.

The bottom line is simply this: We are a Union charged with working together to further the interests of our membership.

It has become increasingly clear that I cannot rely on your cooperation in carrying out our responsibilities to our membership.

Therefore, effective immediately:

- 1) I am removing you from the position of Shop Steward at Brandeis University;
- 2) I am removing you from the Labor-Management representative position at Brandeis University;
- 3) I am requesting that you turn over all Union records and materials, immediately. You may turn over these items to either Jack O'Malley or me at your earliest convenience.

This action is unfortunate, but necessary, in order to adequately protect the Union and its membership at Brandeis University.”

As the hearing before me Conway testified, in pertinent part, as follows:

5

“Q Why did you remove Mr. Santana as a Shop Steward?

10

A I removed Mr. Santana for several reasons. Over a period of roughly 2 months prior to my decision to remove him, I had received calls from members at Brandeis and had several communications on site with members in the course of my visits and activities at Brandeis, complaining about Mr. Santana’s activities as a Shop Steward.

15

There were at least two incidences where grievance handling became a specific problem, and Mr. Santana was also conducting meetings with different groups of the membership. And I specifically received complaints about the fact that he was meeting at the time and speaking in Spanish. Members were not invited and when they entered the meeting, they said that the conversation stopped. Those were some of the specific complaints received from the membership regarding his activities as Shop Steward, and were the reason I began to really look at the execution of his duties during that time period.

20

Q Did this conduct violate the Constitution of Local 254?

25

A Yes, it did.

Q Did you remove Mr. Santana because he was nominated for the position of Chief Steward?

30

A No, I did not.

Q Was Mr. Santana, in fact, nominated for the position of Chief Steward?

35

A Well, Mr. Santana certainly submitted a nomination form. The position of Chief Steward was in no way under consideration for the purposes of nomination or election at Brandeis. Chief Steward is a position that has always historically been appointed, one that carries with it, pursuant to the collective bargaining unit, certain responsibilities at the higher levels of other grievance process. So the Chief Steward is always served at the discretion of the business agent at Brandeis University.

40

Q Do you need a reason to remove a Shop Steward?

45

A Certainly not any type of formal or technical reason, but in this case I had several.

Q Was there a vacancy for the position of Chief Steward?

A No, there was not.”

Santana is fluent in both English and Spanish. Over 50% of the custodians speak Spanish and have little or no facility in English. Santana admits he held meetings with Spanish

only speaking custodians but all custodians were welcome and he was not aware he was not supposed to do so.

5 Santana concedes he filed a second step grievance on behalf of member Michael Dinnuno who lost his grievance at step one but didn't want his grievance appealed to Step 2. However, Santana believed as a shop steward he could appeal to step two and thought, inaccurately, that Dinnuno, who lost at step one, would want him to do so.

10 When all is said and done it is obvious that the union leadership, did not feel, rightly or wrongly, that Santana was a team player, loyal, and cooperative and, accordingly, Respondent Union was within its rights to remove Santana from his appointed union position as shop steward without violating the Act. Santana's removal did not affect his job at Brandeis University nor the pay and benefits associated with that job.

15 Santana's removal as elected representative to the Labor-Management Committee is a different matter.

20 The Labor-Management Committee post is a three year elected position under the collective bargaining agreement and Santana was removed for the two reasons stated in Conway's letter to Santana of May 8, 1996, which is set out above. Suffice it to say Santana denied before me that he failed to work cooperatively with the other custodian committee representative or failed to disclose information about Committee business with the Committee team and business agent. No evidence other than Conway's conclusions on these allegations was presented by the Respondent Union. Conway testified that Santana's running for chief
25 steward was not the reason he was removed from his union positions, however, she didn't say it wasn't a factor and the juxtaposition of events is such that I find, as a practical matter, that it was a major factor in Santana's removal from the two union positions he held.

30 Indeed I find that Respondent Union perceived Santana as a "pain the neck" mainly because of his actions surrounding the snow day grievances and his running for chief steward. These are not valid reasons to remove a member from an elected union position because they are protected employee activity. There is no evidence that the custodians were dissatisfied with Santana's representation of them on the Labor-Management Committee and since it was an elected position Respondent Union was without authority to remove him from that elected
35 position because of his protected activity taking positions contrary to the union leadership on the disposition of grievances and his candidacy for the chief steward's position. Accordingly the removal of Santana from his position as representative to the Labor-Management Committee violated Section 8(b)(1)(A) of the Act.²

40 Remedy

The remedy in this case should be a cease and desist order, the reinstatement of Santana to his elected position as representative to the Labor-Management Committee for the remainder of his term, the payment of a sum of money by Respondent Union to Santana that
45 equals the amount of money Santana lost because of his unlawful removal from office, with interest, and expungement from Santana's union file of any reference to his unlawful removal from his position as representative to the Labor-Management Committee.

² Santana vigorously protested his removal from both positions in many correspondences with Respondent Union leadership and clearly exhausted his internal union remedies. See GC Exh. 18-22.

Conclusions of Law

1. Brandeis University is an employer engaged in commerce within the meaning of
 5 Section 2(2), (6) and (7) of the Act.

2. Respondent Union is a labor organization within the meaning of Section 2(5) of the
 Act.

3. Respondent Union violated Section 8(b)(1)(A) of the Act when it removed Jorge Luis
 10 Santana from his elected position as representative to the Labor-Management Committee.

4. This unfair labor practice effects commerce within the meaning of Section 2(6) and
 (7) of the Act.

15 Upon the foregoing findings of fact, conclusions of law, and the entire record and
 pursuant to Section 10(c) of the Act I hereby issue the following recommended.

ORDER³

20 Local 254, SEIU, AFL-CIO, its officers, agents and representatives shall:

1. Cease and desist from:

25 (a) Removing union officials from elected union positions because they engage in
 protected concerted activity, with interest.

(b) In any like or related manner restraining or coercing employees in the exercise of
 the rights guaranteed them by Section 7 of the Act.

30 2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Reinstate Jorge Luis Santana to his position as union representative to the Labor-
 Management Committee.

35 (b) Make Santana whole for any moneys he lost as a result of Respondent Union's
 unlawful removal of him from his position as union representative to the Labor-Management
 Committee.

40 (c) Expunge from Santana's union file any reference to his unlawful removal as
 representative to the Labor-Management Committee.

(d) Within 14 days after service by the Region post copies of the attached notice
 marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for
 45

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and
 Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.
 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed
 waived for all purposes.

⁴ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in
 Continued

Region 1, after being duly signed by Respondent Union's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices from the Union to members and employees at Brandeis University are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 1, a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply herewith.

Dated, Washington, D.C. August 29, 1997.

Martin J. Linsky
Administrative Law Judge

the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

5 Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

10 WE WILL NOT remove members from elected union positions because they engage in
protected concerted activity.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the
rights guaranteed them in the National Labor Relations Act.

15 WE WILL reinstate Jorge Luis Santana to his position as representative to the Labor-
Management Committee at Brandeis University.

20 WE WILL make Jorge Luis Santana whole for any of loss of earnings he may have suffered as
a result of our unlawful removal of him from his elected position as representative to the Labor-
Management Committee, with interest.

25 WE WILL expunge from Jorge Luis Santana's union file any reference to his unlawful removal
from his position as representative to the Labor-Management Committee.

LOCAL 254, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO
(BRANDEIS UNIVERSITY)

(Labor Organization)

30 Dated _____ By _____
(Representative) (Title)

35 This is an official notice and must not be defaced by anyone.

40 This notice must remain posted for 60 consecutive days from the date of posting and
must not be altered, defaced, or covered with any other material. Any questions concerning this
notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway
Street, 6th Floor, Boston, Massachusetts 02222-1072, Telephone 617-565-6701.

45